Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM 1978.

No. 78-165

GEORGIA MAE DOWNS,
PETITIONER

v.

ROBERTA SAWTELLE, DAVIS GOODINE, DR. JOHN B. CURTIS, MILO COMMUNITY HOSPITAL, MARILYN B. DOW, MARY LOU PATTISON, RUTH A. HAGAN, CARL CARLSON AND AVA STROUT,
RESPONDENTS

Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit.

Appendix to Petition

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE NORTHERN DIVISION

Civil Action No. 75-20-ND

GEORGIA MAE DOWNS,
PLAINTIFF,

v.

ROBERTA SAWTELLE, ET ALS.,
DEFENDANTS.

Transcript of Bench Ruling of the Court upon Summary Judgment Motions.

Pursuant to notice, the above-entitled matter came on for hearing before Honorable Edward T. Gignoux, Judge, United States District Court, District of Maine, at the United States Courthouse & Post Office Building in Bangor, Maine, on May 4, 1976. At the conclusion of oral arguments of counsel, the Court ruled from the bench as follows:

APPEARANCES:

For the Plaintiff: Douglas A. Clapp, Esq., Pittsfield, Me.
Stephen D. Clapp, Esq., Boston, Mass.
Michael J. Cunniff, Esq., Pittsfield, Me.

For Defendant Goodine: Stephen H. Shook, Esq., Milo, Me.

For Defendant Curtis: Malcolm L. Lyons, Esq., Augusta, Me.
Lewis Vafiades, Esq., Bangor, Me.

For Defendants Dow,
Hagan & Pattison: Joseph M. Kozak, Esq., Augusta, Me.

For Defendant Carlson: Phillip D. Buckley, Esq.,
Bangor, Me.

For Defendants Strout & Milo Community Hospital: Gene Carter, Esq., Bangor, Me.
John M. Wallach, Esq.
Bangor, Me.

Also Present:
For Defendant Sawtelle: John Easton, Esq., Dover-Foxcroft,
By: Robert Lingley, Esq.,"

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(In open court:)

THE COURT: Upon the basis of the record presently before the Court and the representations of Mr. Clapp as to the relevant material in the depositions which have not been transcribed, the motion of the Defendant Carlson for summary judgment is granted, and the action is dismissed as against that defendant. Upon the same basis, the motion of the Defendants Strout and Milo Community Hospital for summary judgment is granted, and the action is dismissed as against those two defendants. The Court is persuaded that upon the entire record there exists no material issue of any material fact and that these three defendants are entitled to a judgment in their favor as a matter of law. F.R.Civ.P. 56(c).

The complaint sets forth in two counts a cause of action under 42 U.S.C. § 1983 and a cause of action under 42 U.S.C. § 1985(3).

(1) The § 1983 action is asserted in Count 1. It is clear from the record that no one of these defendants acted with the degree of culpability, or bad faith, required for a viable

§ 1983 claim either by the rule set forth by the United States Supreme Court in *Wood v. Strickland,* 420 U.S. 308, at 322, or by the standard previously declared by the Court of Appeals for this Circuit in *Gaffney v. Silk,* 488 F. 2d 1248, at 1250-51 (1st Cir. 1973). Under the test set forth in *Gaffney v. Silk* liability will attach in a 1983 action only where the defendant subjectively realized that his action would result in depriving the plaintiff of a right or privilege secured by the Constitution of the United States. There is nothing in the record of this case which would support such a finding with respect to any one of these three defendants. Under the test set forth in *Wood v. Strickland* liability under § 1983 will attach only if the defendant knew, or reasonably should have known, that the action he took within the sphere of his official responsibility would violate the Constitutional rights of the person affected, or if he took the action with a malicious intention to cause a deprivation of Constitutional right or injury to that person. While *Wood v. Strickland* addressed itself to school board members, it has been indicated in a number of courts since, including the Court of Appeals for this Circuit, and the Supreme Court itself, See *O'Connor v. Donaldson,* —— U.S. —— (1975), that the *Wood v. Strickland* test is probably applicable in determining the liability of public officials other than school board members. In the present instance there is nothing in the record which would support a finding that any one of these three defendants acted with a malicious intention to cause a deprivation of Constitutional Right or injury to the plaintiff. Furthermore, there is nothing in this record which would support a finding that any one of these defendants knew, or reasonably should have known, that the action taken by that defendant within the sphere of his official responsibility would violate the plaintiff's Constitutional rights. The Defendant Carlson, as Town Manager, did no

more than agree to pay, and to pay, for surgery performed by Dr. Curtis at the request of the State of Maine Health & Welfare Department, the plaintiff being a member of a group entitled to welfare assistance of that kind. Defendants Strout and Milo Community Hospital did nothing other than provide hospital facilities for the care of the plaintiff when admitted by Dr. Curtis, who was a member of the hospital staff, and release the plaintiff's child to a state Health & Welfare Department worker, who had identified herself and represented that she had authority to take the child.

The Court is aware, of course, that § 1983 is applicable only to one who is acting under color of State law, and recognizes the position of the Defendants Strout and Milo Community Hospital that they were not acting under color of state law. It is not necessary for the Court to rule on that question. The Court will state, however, as it has ruled previously in very similar circumstances, that it is persuaded by the great weight of present authority that the Milo Community Hospital, and hence the Defendants Strout, is not so involved with State of federal activities as to be subject to § 1983 liability.

With respect to the remaining defendants, upon the present record the Court finds a sufficient doubt exists as to whether or not any one of those defendants acted with the requisite intent, under the test of either *Wood v. Strickland* or *Gaffney v. Silk*, so that the present motions for summary judgment must be denied. The Court will determine the issues thus presented upon a complete record. Accordingly, the motions for summary judgment filed by the remaining defendants — that is, the defendants Goodine, Curtis, Dow, Hagan and Pattison for summary judgment on Count 1 of the complaint are denied. The cross-motion of the plaintiff for partial summary judgment under Count 1 is also denied.

(2) The Court will now turn its attention to Count II of the complaint which purports to set forth a cause of action under 42 U.S.C. § 1985(3). The motions of all defendants for summary judgment in their favor under Count II are granted, and Count II is dismissed as against all defendants. Similarly, the plaintiff's motion for partial summary judgment insofar as it is addressed to Count II is denied.

The test for a viable cause of action under § 1985(3) is set forth in *Griffin v. Breckenridge,* 403 U.S. 88, 102 (1971) a § 1985(3) action will lie only when it can be determined that the actions of the defendants were motivated by some "class-base invidiously discriminatory animus." Subsequent case law has made clear that a dual test is presented. The facts must show, first, that the defendants conspired against the plaintiffs because of their membership in a class, and, secondly, that the criteria defining the class were invidious. *Harrison v. Brooks,* 519 F. 2d 1358, 1360 (1st Cir., 1975); *see also, Hahn v. Sargent,* 523 F. 2d 461, 468-69 (1st Cir. 1975), *cert. den.* 44 U.S. L.W. 3545, (U.S., March 22, 1976); *Bricker v. Crane,* 468 F. 2d 1228, 1232-33 (1st Cir., 1972), *cert. den.* 410 U.S. 930 (1973).

The Clerk will prepare an order granting the motions of the Defendants Carlson, Strout and Milo Community Hospital for summary judgment under both counts of the complaint, and dismissing the entire action with prejudice as against those defendants. The Clerk will prepare an order granting the motions of the remaining defendants for summary judgment under Count II of the complaint and dismissing Count II as against those defendants. The Clerk will also prepare an order denying the plaintiff's motion for partial summary judgment.

There remains for trial the claim set forth under § 1983 in Count I of the complaint as against the defendants Sawtelle, Goodine, Curtis, Dow, Hagan and Pattison.

If there is nothing further with respect to these motions, the Court will proceed to pretrial conference with respect to the issues under Count I as against those defendants who remain in the case.

Mr. CLAPP?

MR. CLAPP: Your Honor, I would request for the plaintiff that the Court consider entering an order that there is not just reason for delay in entry of judgment for these various parties for whom summary judgment has been granted.

THE COURT: The Court is of the view that this entire matter should be resolved and then the entire record go up on any appeal.

MR. CLAPP: Your Honor, the plaintiff would submit that this trial would be a costly affair for all the parties and if it had to take place two times, it would be an unnecessary cost for all the parties.

THE COURT: The Court suggests that counsel may wish to submit the issues here presented — as respects the plaintiff and the remaining defendants — upon the basis of the depositions and extensive discovery which you have all completed, that is, the record presently before the Court, which would avoid the additional expense involved in a trial. The Court is not disposed to enter judgment separately on any aspect of this case. What is your feeling on that, Mr. Buckley?

MR. BUCKLEY: I don't feel that the Court should, your Honor. Certainly the expense that my Brother Clapp speaks of would be costly. I think Mr. Carlson, quite frankly, and the town, has gone through enough. We have asked continually to be removed from this voluntarily and been refused. There's absolutely no showing that we should stay.

MR CARTER: May it please the Court, our position would be that the entire case should go up on a single record. To the extent that my brother Clapp wishes to consider submitting the case for determination on the merits on the present record, then that would appear to be the most judicious manner in which to facilitate this disposition, your Honor.

THE COURT: Well, counsel may wish to confer as to how they wish to move from here. The Court will recess. It has another matter set for 3:30, I believe, which shouldn't take too long. Perhaps when that has been completed, I can meet you gentlemen in chambers and we can see where we are going from here, if that will be satisfactory.

The Court will be in recess.

(Whereupon, this bench ruling was concluded.)

CERTIFICATE

I hereby certify that the foregoing is a true and complete transcript of the bench ruling of the court in the matter above-described, subject, however, to editing by Judge Gignoux prior to release.

/s/ Harry B. Derry
OFFICIAL COURT REPORTER

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridge, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President,

or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any salve; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C.

§ 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

. . .

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State

or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.